

REMARKS

Claim 28 has been rewritten in independent form and is otherwise the same claim 28 as was originally presented.

Applicants have amended claims 1-2, 15, 26-28, and 40 in this application. Applicants are not conceding in this application that those claims are not patentable over the art cited by the Examiner, as the present claim amendments are only for facilitating expeditious prosecution of the patent application. Applicants respectfully reserve the right to pursue these and other claims as recited prior to being amended herein in one or more continuations and/or divisional patent applications.

The Examiner objected to the disclosure.

The Examiner objected to claim 28.

The Examiner rejected claims 1-22 and 26-47 under 35 U.S.C. § 103(a) as allegedly being unpatentable over DeLima *et al.* (US PGPub 2003/0023669 hereinafter DeLima *et al.*) filed on 7/24/2001, and further in view of Stone (US PGPub 2003/0036886 hereinafter Stone).

The Examiner rejected claims 23-25 and 48-50 under 35 U.S.C. § 103(a) as allegedly being unpatentable over DeLima *et al.* (US PGPub2003/0023669 hereinafter DeLima *et al.*) further in view of Stone (US PGPub 2003/036886 hereinafter Stone) as applied to claims 1 and 26 above, and further in view of Hickman *et al.* (US 6,523,036 hereinafter Hickman *et al.*) filed on 8/1/2000 and patented 2/18/2003, Figure 1A of Hickman *et al.* is reproduced below.

Applicants respectfully traverse the specification objection, objection to claim 28, and § 103 rejections with the following arguments.

Specification Objections

The examiner argues: “The disclosure is objected to because of the following informalities: In the Brief Description of the Drawing section, Fig 10 does not depict fully what is shown in the diagram.”

In response, Applicants have amended the description of FIG. 10 in the Brief Description of the Drawing section to depict fully what is shown in the diagram.

The examiner argues: “The disclosure is objected to because of the following informalities: "learns" should be "learn" (**pg. 4 line(s) 21**) before "...balancers and servers of the web server cluster 21 to ...".”

In response, Applicants respectively believe that the Examiner meant to recite an objection to line 21 on page 11, rather than on page 4. Therefore, Applicants have amended the specification at page 11, line 21 in accordance with the Examiner’s suggestion.

The examiner argues: “The use of the trademarks Microsoft, Netscape Enterprise Server, JavaWebServer, and Apache HTTP Server (**pg.6 line(s) 8**) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.”

In response, Applicants performed a trademark search at the USPTO website and determined that “Microsoft IIS”, “JavaWebServer”, and “Apache HTTP Server” are not currently registered trademarks. However, Applicants determined from the search that “Netscape Enterprise Server” is a currently registered trademark and the specification has been accordingly amended.

Objection to Claim 28

The examiner argues: "Claim 28 is objected to because of the following informalities: the colon (:) is missing after "...further comprising..."."

In response, Applicants note that in the amendment to claim 28, a colon appears after "said method comprising".

35 U.S.C. § 103(a)

Claims 1-22, 26-27, and 41-47

The Examiner rejected claims 1-22, 26-27, and 41-47 under 35 U.S.C. § 103(a) as allegedly being unpatentable over DeLima *et al.* (US PGPub 2003/0023669 hereinafter DeLima *et al.*) filed on 7/24/2001, and further in view of Stone (US PGPub 2003/0036886 hereinafter Stone).

Applicants respectfully contend that claims 1 and 26 are not unpatentable over DeLima *et al.* and further in view of Stone, because DeLima *et al.* and further in view of Stone does not teach or suggest each and every feature of claims 1 and 26.

For example, DeLima *et al.* and further in view of Stone does not teach or suggest the feature: “said control server being directly linked to at least two servers in each cluster via a communication channel between the control server and the at least two servers in each cluster”.

The Examiner argues that Stone, FIG. 12 discloses the claimed control server as being represented in Stone by a node monitor.

In response, Applicants assert that there are three node monitors (28, 38, 48) in Stone, FIG. 12 and none of these three node monitors satisfies the preceding feature of claims 1 and 26. For example, node monitor 28 is not directly linked to at least two servers in cluster 30 because node monitor 28 is directly linked to server 31 but is not directly linked to servers 32 and 33 in cluster 30, and node monitor 28 is not directly linked to at least two servers in cluster 40 because node monitor 28 is directly linked to server 41 but is not directly linked to server 42 in cluster 40. Similar considerations apply to node monitors 38 and 48.

Based on the preceding arguments, Applicants respectfully maintain that claim 1 is not unpatentable over DeLima *et al.* and further in view of Stone, and that claim 1 is in condition for allowance. Since claims 2-22 depend from claim 1, Applicants contend that claims 2-22 are likewise in condition for allowance. Since claims 27 and 41-47 depend from claim 26, Applicants contend that claims 27 and 41-47 are likewise in condition for allowance.

Claims 28-40

The Examiner rejected claims 28-40 under 35 U.S.C. § 103(a) as allegedly being unpatentable over DeLima *et al.* (US PGPub 2003/0023669 hereinafter DeLima *et al.*) filed on 7/24/2001, and further in view of Stone (US PGPub 2003/0036886 hereinafter Stone).

Applicants respectfully contend that claim 28 is not unpatentable over DeLima *et al.* and further in view of Stone, because DeLima *et al.* and further in view of Stone does not teach or suggest each and every feature of claim 28.

For example, DeLima *et al.* and further in view of Stone does not teach or suggest the feature: “monitoring an operational status of a first communication link between a first server of the first cluster and a second server of the second cluster, said monitoring being performed by the control server, said monitoring including sending a query signal to the first server, said query signal requesting the first server to send a response signal to the control server indicating the status of the first communication link”.

The Examiner argues: “Stone teaches the testing the communication link from the first server in the first cluster to the second server in the second cluster to determine that of the operational status (¶0044, teaches that the node monitor is able to test links from other

network other than it's specific cluster to determine the operational status.).”

In response, Applicants note that the Examiner has not cited anything in Stone allegedly disclosing “said monitoring including sending a query signal to the first server, said query signal requesting the first server to send a response signal to the control server indicating the status of the first communication link”. Although Stone, Par. 44 teaches monitoring subnetworks associated with the various nodes, Stone, Par. 44 does not disclose how said monitoring is implemented and most certainly does not disclose “said monitoring including sending a query signal to the first server, said query signal requesting the first server to send a response signal to the control server indicating the status of the first communication link”. Applicants respectfully request that the Examiner provide pertinent citations to Stone with accompanying analysis to support the Examiner’s contention that Stone discloses the preceding feature of claim 28.

The Examiner has not even presented an argument as to why it is allegedly obvious to modify DeLima by the preceding feature of claim 28.

Accordingly, Applicants respectfully contend that the Examiner has not established a *prima facie* case of obviousness in relation to claim 28.

Based on the preceding arguments, Applicants respectfully maintain that claim 28 is not unpatentable over DeLima *et al.* and further in view of Stone, and that claim 28 is in condition for allowance. Since claims 29-40 depend from claim 28, Applicants contend that claims 29-40 are likewise in condition for allowance.

Claims 23-25 and 48-50

The Examiner rejected claims 23-25 and 48-50 under 35 U.S.C. § 103(a) as allegedly

being unpatentable over DeLima *et al.* (US PGPub2003/0023669 hereinafter DeLima *et al.*) further in view of Stone (US PGPub 2003/036886 hereinafter Stone) as applied to claims 1 and 26 above, and further in view of Hickman *et al.* (US 6,523,036 hereinafter Hickman *et al.*) filed on 8/1/2000 and patented 2/18/2003, Figure 1A of Hickman *et al.* is reproduced below.

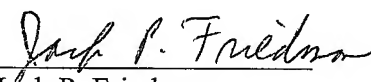
Since claims 23-25 depend from claim 1, which Applicants have argued *supra* to not be unpatentable over DeLima in view of Stone under 35 U.S.C. §103(a), Applicants maintain that claims 11-12 are likewise not unpatentable over DeLima in view of Stone and further in view of Hickman under 35 U.S.C. §103(a).

Since claims 48-50 depend from claim 26, which Applicants have argued *supra* to not be unpatentable over DeLima in view of Stone under 35 U.S.C. §103(a), Applicants maintain that claims 48-50 are likewise not unpatentable over DeLima in view of Stone and further in view of Hickman under 35 U.S.C. §103(a).

CONCLUSION

Based on the preceding arguments, Applicants respectfully believe that all pending claims and the entire application meet the acceptance criteria for allowance and therefore request favorable action. If the Examiner believes that anything further would be helpful to place the application in better condition for allowance, Applicants invites the Examiner to contact Applicants' representative at the telephone number listed below. The Director is hereby authorized to charge and/or credit Deposit Account 09-0457.

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